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4 Motor Acceptance Corporation, servicer for Nissan-Infiniti LT

5 UNITED STATES BANKRUPTCY COURT  
6 DISTRICT OF NEW JERSEY  
7

8 In re: ) Case No. 19-23018 (MBK)  
9 JERRY MICHAEL DEMAIO )  
10 FAYELLA DEMAIO, ) Hearing Date: 12-17-2019  
11 Debtors )  
12 ) BRIEF OF INFINITI FINANCIAL  
13 ) SERVICES, A DIVISION OF NISSAN  
14 ) MOTOR ACCEPTANCE CORPORATION,  
15 ) SERVICER FOR NISSAN-INFINITI LT  
16 ) IN SUPPORT OF MOTION FOR STAY  
17 ) RELIEF AND IN OPPOSITION TO  
18 ) MOTION OF DEBTOR TO RECLASSIFY  
19 ) ITS CLAIM

20 FACTS

21 On June 14, 2014, the debtor, Fayella DeMaio executed a  
22 motor vehicle lease agreement for the lease of a 2014 Infiniti  
23 Q60 convertible. The lease was for a term of 36 months at  
24 \$1060.00 per month commencing 6-14-14.  
25

The lease ended on 6-14-17. The debtor continued to make  
monthly lease payments until 6-7-19 when the last lease payment  
was made by the debtor.

The debtor filed this Chapter 13 petition on 7-1-19. In  
the petition, the debtor rejected the lease, treating it as a  
secured claim which was to be paid in full through the plan with

1 interest. Infiniti Financial Services (IFS) has filed a motion  
2 for stay relief to repossess the vehicle. The debtor has moved  
3 to reclassify IFS's claim to secured, declare the lease to have  
4 been converted to a secured claim by virtue of Infiniti  
5 Financial Service's acceptance of payments equal to monthly  
6 lease payments for a period of some 22 months after the lease  
7 ended.

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ISSUE

Has the lease been converted into a retail installment contract by virtue of acceptance of lease payments by the lessor after the lease ended.

ARGUMENT

State law will first be examined.

**The Consumer Protection Leasing Act:** The State of New Jersey has adopted the Consumer Protection Leasing Act, N.J.S.A. 56:12-60 et seq, to govern and set standards for the leasing of motor vehicles.

The term "lease" is defined in the Act as being "a contract or other agreement between a lessor and a lessee, other than a fleet lease, a fair market commercial lease, or a TRAC lease, entered into after the effective date of this act for the use of a motor vehicle by the lessee for a period of time exceeding 120 days, whether or not the lessee has the option to purchase or otherwise become the owner of the motor vehicle at the



1 expiration of the lease. **A lease shall not be deemed to be a**  
2 **retail installment contract, as defined in subsection (b) of**  
3 **Section 1 of P.L.1960, c.40 (C.17:16C-1), unless the lessee, for**  
4 **no or for a nominal consideration, becomes the owner, or has the**  
5 **option of becoming the owner of the motor vehicle at the end of**  
6 **the term of the lease.** (emphasis added) N.J.S.A. 56:12-61 as  
7 amended through 1999.  
8

9 The lease signed by the debtor is a "lease" as defined in  
10 the Consumer Protection Leasing Act. It is not a TRAC lease, a  
11 fleet lease or a fair market value commercial lease. It is a  
12 lease of a vehicle for personal use. Its term is 36 months. And  
13 the purchase option set forth in the lease is not nominal.

14 The New Jersey Uniform Commercial Code also deals with the  
15 distinction between leases and security interests. It states at  
16 N.J.S.A. 12A:1-201(37) that a transaction does not create a  
17 security interest merely because it provides that "(d)the lessee  
18 has the option to become the owner of the goods for a fixed  
19 price that is equal to or greater than the reasonably  
20 predictable fair market value of the goods at the time the  
21 option is to be performed".  
22

23 The Bankruptcy Code will be examined next.

24 Debtors argue that contracts can be implied by the conduct  
25 of the parties and that by continuing to accept lease payments

1 after the lease ended gave rise to a security agreement between  
2 IFS and the debtors.

3 IFS does not deny that monthly payments were made by the  
4 debtors after the lease ended. However, it is IFS's position  
5 that the debtor was the same as a holdover tenant. A lease  
6 contract existed between the debtor as lessee and IFS as the  
7 lessor. The payments made by the debtor to IFS did not change  
8 this relationship.  
9

10 The issue of whether a debtor can finance the residual  
11 price of a leased vehicle over the life of a Chapter 13 plan was  
12 dealt with in the case of In re Pittman, 289 B.R. 448 (Bankr.  
13 M.D. Fla. 2003). In that case, the court found that the lease  
14 required the debtor to make a lump sum payment in order to  
15 exercise the purchase option, that § 1322(b)(2) applied only to  
16 secured creditors and did not permit a Chapter 13 debtor to  
17 modify the rights of a lessor. The court then held that  
18 §1322(b)(7) did not permit a Chapter 13 debtor to finance the  
19 residual price of a leased vehicle over the life of Chapter 13  
20 plan.  
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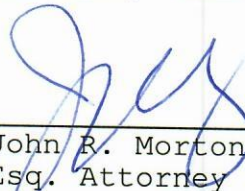
22 See also In re Blackburn, 88 B.R. 273 S.D. Cal. 1988.

23 The debtors have rejected the lease in the plan filed with  
24 the Court. Bankruptcy code section 365(p)(3) applies and states  
25 that if the lease is not assumed, the stay under 362 and 1301  
automatically terminate as to the leased property.

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2 For all of these reasons, it is respectfully argued that  
3 debtors' motion should be denied and that IFS's motion for  
4 relief should be granted.  
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7 Dated this 10<sup>th</sup> day of December, 2019  
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9 Respectfully submitted,  
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11   
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14 Infiniti Financial  
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